

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|--------------------------------|---|----------------------|
| DONALD SCOTT PATZ, |) | |
| |) | |
| Plaintiff, |) | 4:05cv3128 |
| |) | |
| vs. |) | MEMORANDUM AND ORDER |
| |) | (Appeal) |
| NEBRASKA DEPARTMENT OF |) | |
| CORRECTIONAL SERVICES, et al., |) | |
| |) | |
| Defendants. |) | |

The plaintiff, Donald Scott Patz, a prisoner, has filed a Notice of Appeal (filing no. 76) and an Application for Leave to Proceed In Forma Pauperis ("IFP") on appeal (filing no. 77), supported by an Affidavit (filing no. 78) and a certified copy of the plaintiff's inmate trust account (filing no. 79). Because the plaintiff has previously received leave to proceed IFP in the district court, and because this appeal is taken in good faith, the plaintiff may continue to proceed IFP on appeal pursuant to Fed. R. App. P. 24(a)(3).¹

Pursuant to 28 U.S.C. § 1915(b)(1), the plaintiff is responsible for an initial partial appellate filing fee of \$5.28 for the filing of this appeal. However, leave to proceed IFP on appeal does not exempt the plaintiff from liability for payment of the full \$455 appellate filing fees in installments regardless of the outcome of the appeal. In addition, by filing a Notice of Appeal, the plaintiff consents to the deduction by prison officials of the filing fees from the plaintiff's inmate trust account.

After payment of the initial partial appellate filing fee, the remaining balance of the appellate filing fees will be collected by the plaintiff's institution in accordance with 28 U.S.C. § 1915(b)(2), which states:

b)(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's

¹Fed. R. App. P. 24(a)(3) states:

(a) Leave to Proceed in Forma Pauperis....

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless the district court-- before or after the notice of appeal is filed--certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis. In that event, the district court must state in writing its reasons for the certification or finding.

income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

THEREFORE, IT IS ORDERED:

1. That filing no. 77, the plaintiff's Application for Leave to Proceed IFP on appeal, is granted;
2. That in accordance with 28 U.S.C. § 1915(b), an initial partial appellate filing fee of \$5.28 shall be remitted to the court when funds are available in the plaintiff's inmate trust account;
3. That, thereafter, all future custodians of the plaintiff shall collect and remit the balance of the \$455 appellate filing fees in the manner required by 28 U.S.C. § 1915(b)(2);
4. That the Clerk of Court shall send a copy of this order to the parties, to the appropriate financial officer for the plaintiff's institution and to the Eighth Circuit Court of Appeals, and
5. That the Clerk shall process this appeal to the Eighth Circuit.

DATED this 5th day of April, 2007.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
Chief District Judge